

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of:

Request for Review and Waiver)	
of the Decision of the)	
Universal Service Administrator by)	
)	CC Docket No: 02-6
Charleston County School District)	
Billed Entity Number: 127168)	
)	SLD File No. 494054
Schools and Libraries Universal Service)	
Support Mechanism)	
)	
Wireline Competition Bureau)	

REQUEST FOR REVIEW

INTRODUCTION

Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (USAC) may seek review from the Commission.¹ Charleston County School District (Charleston) hereby appeals the current action taken by USAC in regard to three of the District's Funding Year (FY) 2006 funding requests. These requests are Funding Request Numbers (FRNs) 1429328, 1429353, and 1429359.

¹ 47 C.F.R. § 54.719(c).

BACKGROUND

On January 12, 2006, Charleston posted and certified FCC Form 470 Number 798650000571355 which outlined various cellular and paging services for which the School District wished to seek Schools and Libraries Universal Service Support Mechanism (E-rate) discounts. On this Form 470, the District marked “No” on Block 2, Items 8b and 9b, which states “No, I have not released and do not intend to release an RFP for these services”. Based on the responses received as a result of the posting of this Form 470, Charleston evaluated the bids received and selected service providers. On February 14, 2006, the District submitted and certified Form 471 Application Number 494054. This Application included FRNs 1429328, 1429353, and 1429359 for cellular and paging services.

In May 2006, Charleston responded to a Selective Review Information Request (SR-2006-127168). As part of this review, the Schools and Libraries Division (SLD) asked Charleston to provide information about the competitive bidding process for the above captioned funding requests that reference Form 470 number 798650000571355. Charleston provided the SLD with copies of the information it had provided to any and all interested service providers who contacted the District as a result of the posted Form 470. Attached as Exhibit A of this appeal is a copy of the information provided to interested service providers and to USAC as part of the Selective Review Information Request Response.

On May 8, 2007, the SLD issued a Funding Commitment Decision Letter (FCDL) for the funding requests at issue. The SLD denied all three funding requests and gave the following explanation:

FRN was denied for failure to advise bidders that an RFP was issued. An RFP was issued and the Form 470 advised potential bidders that no RFP existed.

On June 27, 2007, Charleston filed an appeal with USAC. On August 30, 2007, Charleston received the Administrator’s Decision on Appeal which denied the appeal.²

Charleston respectfully disagrees with USAC’s appeal decision since it procured E-rate eligible services in accordance with state and local procurement rules without issuing an RFP.

² Attached as Exhibit C.

Charleston had a fair and competitive bidding process, and under South Carolina state and local procurement regulations, the vendor documentation supplied to interested service providers was not an RFP. The vendor documentation supplied to interested service providers was a detailed outline of services requested on Form 470 number 798650000571355 and instructions for service providers to respond to that request.

DISCUSSION

The E-rate regulations as adopted by the FCC do not preempt an applicant's own local and state procurement rules.³ E-rate adds an additional layer of rules an applicant must comply with to receive E-rate discounts. In accordance with South Carolina state and local procurement regulations, Charleston never did nor intended to release an RFP for paging and cellular services since an RFP is not required to procure those services under state and local procurement rules.

The local procurement code gives the District Board of Trustees the authority to exempt specific supplies or services from the competitive bidding process. Using this authority, the Board of Trustees has created an exemption for public services and utilities. Paging and cellular services are classified as public service and utilities at Charleston County School District, therefore exempt from the procurement code procedures that require an RFP.⁴ When Charleston filed and certified Form 470 number 798650000571355, the District correctly checked the box to inform potential vendors there was no RFP and the District did not intend to release a RFP.

Charleston conducted a fair and competitive bidding process

Under FCC regulations, applicants must conduct a fair and competitive bidding process. In order to ensure this happens, the FCC requires applicants to release a Form 470 for all services for which an applicant may wish to receive e-rate discounts. The Form 470 is available on the USAC website for all interested service providers to find and the applicant cannot do anything which would result in one service provider receiving a competitive advantage. In the current case, Charleston posted Form 470 number 798650000571355 that opened a fair and competitive bidding process under FCC regulations as well as local and state procurement rules and there is

³ 47 C.F.R. § 54.504(a).

⁴ See Charleston County School District Procurement Code at IV. Procurement Organization, (A)(4).

no evidence to suggest Charleston did anything to prefer one service provider over another or to give a potential service provider any competitive advantage.

During the 28-day period between the posting of the Form 470 and the Allowable Contract Date, Charleston provided the same written documentation to all interested potential service providers who contacted the District as a result of the Form 470.⁵ This documentation included general information about the District and the services it was seeking through the Form 470, as well as guidelines for submitting responses to the District. Based on the information received from interested potential service providers, Charleston carefully considered all bids, and made the appropriate service provider selections.

Under state and local procurement regulations, the vendor documentation supplied by Charleston to vendors was not an RFP.⁶

As part of the denial issued by USAC, USAC asserted that the documentation provided by Charleston to interested vendors met USAC's adhoc definition of an RFP. USAC found:

The document specifically included district information, requirements for services sought, guidelines for submitting bids, and criteria by which bids would be evaluated. In accordance with guidelines set forth by the FCC, the aforementioned document matches the program's criteria for a RFP.⁷

Charleston respectfully disputes this assertion. First, the SLD has not published or provided the above stated guidelines to applicants. USAC and the SLD should not be allowed to hold applicants to standards and guidelines that define an RFP to which an applicant does not have access. Secondly, Charleston asserts that it is reasonable and prudent to provide written guidance to service providers responding to a Form 470 solicitation for services that are complex, in order to ensure that service providers understand and adequately address the technical requirements of the solicitation. Nothing in the published SLD rules precludes issuing such guidance pursuant to a Form 470 solicitation. The fact that the guidance is issued pursuant to a Form 470 does not make such guidance an RFP. Furthermore SLD recognizes that if an

⁵ See Information provided to interested potential service providers attached as Exhibit A.

⁶ See Memorandum from Fredrick Feil, Director of Contracts and Procurement Services for Charleston County School District, attached as Exhibit B.

⁷ See Administrator's Decision on Appeal attached as Exhibit C.

RFP is issued, it must meet the standards of state and local procurement codes and policies, including applicable definitions and procedural requirements for RFPs.

Charleston adhered to state and local procurement regulations which allowed it to procure cellular and paging services without releasing an RFP. If Charleston had released an RFP, all of the following items would have been required:

- 1) The RFP would be sent to a list of pre-qualified vendors.
- 2) The RFP would be publicly advertised on the South Carolina Budget and Control Board Materials Management Office website's South Carolina Business Opportunities (SCBO) page, and/or advertised in a local newspaper of general circulation.
- 3) The RFP would indicate the District Solicitation Number, the designated Procurement Officer, and the dates when questions are due and when bids are due.
- 4) The RFP would result in a public bid opening to unseal all the bids and proposals and to announce the offerors.
- 5) Upon vendor selection a Notice of Intent to Award would be issued by the designated Procurement Officer and published for public notice.
- 6) A contract would be entered into with the awardee incorporating the RFP and the awardee proposal, and a purchase order would be issued referencing the contract.

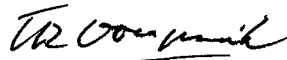
In the current case, none of the above listed requirements for an RFP were necessary or used in this procurement. A contract was not created based on an RFP and proposal nor was a purchase order issued. The services procured were acquired on a month-to-month basis. Therefore Charleston correctly informed potential vendors on the establishing Form 470 that the District did not have an RFP, nor did the District intend to release an RFP.

SUMMARY

The School District did not issue a Request for Proposal during the Form 470 application process for the services and funding requests at issue in this appeal. The District correctly followed local and state procurement rules and then released a Form 470 on the USAC website in accordance with E-rate regulations. The District's Form 470 listed an appropriate contact person who provided all interested vendors with identical vendor information upon request in accordance with the Form 470. Since all vendors received the same information, no one vendor received

preferential treatment. Charleston conducted a fair and competitive bidding procedure without issuing an RFP as defined by the state and local procurement rules. Accordingly, Charleston respectfully requests the Commission to reverse the USAC appeal decision and remand the FRNs to the SLD for funding.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "F. Russell Doupnik", written over a horizontal line.

F. Russell Doupnik
Executive Director Information Technology
Charleston County School District
3999 Bridge View Drive
North Charleston, SC 29405

Exhibit A

Information provided to interested potential service providers during the
Form 470 Application process.

INFORMATION REQUESTED FORM 470 #

7965000074355

Applicant: Charleston School District

Charleston County School District
January 2006
Details for Cellular month to month services

Section 1: General Information

Purpose Charleston County School District (CCSD) is seeking the following services on a month to month basis:

- Wireless or Cellular Telephone Services - Voice services including basic voicemail
- Push to Talk/Direct Connect Radio Service
- Handheld Data Services - Blackberry support or equal
- Pagers - text & numeric paging

1.2 About CCSD

Charleston County School District has approximately 81 school facilities, 1 District Office, 1 Operations Center and 6 Constituent District Offices. Please see Appendix A for street addresses for each facility. Geographically, the district covers all of Charleston County, South Carolina, a stretch of coastal land extending nearly 100 miles along the Atlantic Ocean (McClellanville to Edisto Island) and covering 919 square miles.

Current wireless services include the following:

553 wireless or cellular phones,

79 pagers,

33 Blackberry devices.

However, changes are made on a routine basis and CCSD makes no guarantee of quantities for any service to be procured.

Section 2: Scope of Work

General Requirements

- 2.1 The selected vendor(s) will provide quality cellular phone coverage in the areas defined by the vendor as good or excellent (Appendix A). Additionally, pager and data services for handheld devices, (Blackberry or comparable) must be provided in the defined area.
- 2.2 Toll free access to technical assistance must be readily available between the hours of 8:00 AM and 5:00 PM (at a minimum) on business days.
- 2.3 The selected vendor(s) shall provide a point of contact for all requests for new service, repairs and changes to existing service during normal business hours. In addition, an emergency point of contact in case of system wide problems must be provided.
- 2.4 The selected vendor(s) shall not charge a fee for activating or deactivating service and will perform the activation or deactivation within 24 hours from verification of placement of the request.
- 2.5 The selected vendor(s) shall not charge a fee for early termination of services. It is understood that the needs of the District change and that services are cancelled and added as required by the District.
- 2.6 The selected vendor(s) shall notify the Telecommunications Administrator, in advance, (by email) of any planned service outages that may affect the District's services.
- 2.7 The selected vendor(s) will provide instruction on the use of its products and services. Training can be printed, recorded, web-based or provided by a vendor associate.

Equipment

- 2.10 It is the District's goal to minimize the variety of cellular & wireless phone devices and equipment in use within the District. The vendor will make recommendations for the following devices and provide cost and model information. All devices must be provided with an office AC charger and a belt clip or carrying case. Discounts off of list price, for optional accessories should be stated in the vendor's price proposal.
- a. Low or no cost device to be provided for wireless or cellular phone service
 - b. Device to provide for push-to-talk radio as well as wireless, phone service
 - c. A "rugged" version of item b.
 - d. A Blackberry device or functionally comparable device
 - e. A pager unit for 1 way messaging (numeric only)
 - f. A pager unit for 2 way messaging (alpha and numeric)
- 2.11 The selected vendor(s) must provide a warranty on all devices and/or parts provided under this contract. All defective items must be replaced promptly at no additional cost to the District, during the warranty period. The vendor(s) may include costs for insurance to protect against theft or loss of equipment in the price proposal.

Rate Plans

- 2.12 Vendors may offer several plans that would be appropriate for the District. Plans should feature a regional calling area that is defined by the vendor but would cover at a minimum Charleston County and the surrounding counties.
- 2.13 Rate plans for service should include the following:
- Basic Voicemail
 - Caller ID
 - Call Waiting
 - Call Forwarding
 - Long Distance within the State of South Carolina
 - Detailed Billing
 - Wireless E-911
 - On-line access to account information
 - The vendor(s) shall provide free long distance service for calls placed within the service region.
 - Rate plans for Blackberry devices should included unlimited email and data
- 2.14 The majority of the District's business is conducted between the hours of 7:00 AM and 5:00 PM on business days. Plan hours should be noted for each vendor plan. If there are any "free calling times" those times should be stated as well. Rates for roaming and long distance charges should be listed.

Billing Programs

- 2.16 The District shall be provided with one invoice for each vendor, using a single "master account" number. However, each invoice must have a breakdown of charges grouped by school or department "sub account". If this cannot be easily accommodated by the vendor's current billing system, an alternate method for providing this information must be submitted. A sample invoice should be included as part of the proposal. In addition to paper invoices the vendor should provide online or CD billing.
- 2.17 It is preferable that the vendor send a "master" invoice to the District's Account Payable office and a courtesy copy of the invoice to each school or department (of their associated charges).
- 2.18 The District will provide a list of employees who are authorized to approve changes or additions to District's accounts. Requests made by individuals not authorized to do so should not be honored by the selected vendor(s).
- 2.19 The selected vendor(s) must provide a billing point of contact. A back up contact should be provided when the primary contact is not available.
- 2.20 The option of pooling minutes within the District as a whole, a school or department should be indicated where available.

Transition Plans

- 2.21 The selected vendor(s) must outline a streamlined plan for transferring existing service. The proposal should include any costs associated with this process (equipment or fees) and the time required for completing this process. Please provide a statement confirming that existing numbers will be transferable to the new service if needed under the number portability process.

Proposal

Section 3: Technical Proposal Submission

- 3.1 **Transmittal Letter:** Provide a transmittal letter signed by a company official authorized to bind the company to the proposal approving the separate technical and price proposal submissions.
- 3.2 **Executive Summary:** Condense and highlight the contents of the technical proposal in an "Executive Summary", indicating how the vendor meets the minimum qualifications outlined. The summary shall also identify any exceptions the vendor has taken to the requirements noted by CCSD. **Warning:** Exceptions to terms and conditions may result in having the proposal deemed unacceptable or classified as an inadequate response.
- 3.3 **Technical Response** Please provide a narrative of the vendor's current network, including the number of towers in the coverage area and the type of wireless technology used (digital, analog, GSM, CDMA, etc.) The service expansion plan should be provided in this section. The response should indicate the plans and equipment offered, the means by which major equipment and service changes or upgrades will be coordinated with the District, methods for coordinating resolution of any billing questions, and any service or support offered.
- 3.4 **Coverage Map:** The vendor must include a detailed coverage map of Charleston County and surrounding areas, as well as a rating for each school in Appendix A, indicating the level of indoor coverage for voice communications anticipated at each location. The ratings should be assigned as: excellent, good, fair or poor.
- 3.5 **Service Level Agreements:** The selected vendor(s) will maintain service levels and quality, to industry standards, so as to minimize impaired service, low transmission, transmission interference, and similar deficiencies. Please detail any service level agreements offered.
- 3.6 **Operational Procedures:** Please outline procedures for routine request such as requests for new services, devices, service cancellations, repairs and technical support.
- 3.7 **Vendor Experience and Capabilities:** Vendors shall include information regarding past experience with similar requirements. Vendors shall describe their experience and capabilities through a response to the following:
 - 3.7.1 An overview of the vendor's experience providing equipment and services. This description shall include:
 - a) A summary of the services offered
 - b) The number of years the vendor has provided these services
 - c) The number of educational clients the vendor serves in South Carolina.
 - d) A listing of the vendor's team of key personnel that will service the account. Please describe each person's area of expertise.
 - 3.7.2 References. References of up to three of its customers who are capable of documenting:
 - a) The vendor's ability to manage accounts of comparable size and complexity
 - b) The quality and breadth of services provided by the vendor
 - c) Each client reference must include the following information:
 - i. Name of client organization
 - ii. Name, title, and telephone number of point of contact for client organization
 - iii. The services provided, scope of the contract, geographic area being supported, and performance objectives satisfied, and improvements made to client systems (e.g. reduction in operation/maintenance costs while maintaining or improving current performance levels).

Note: CCSD shall have the right to contact any reference as part of the evaluation and selection process.

- 3.7.3. E-rate: Please describe your company's participation in the federal E-rate program.

Section 4: Pricing Proposal Submission

- 4.1 Please indicate how minutes are rounded for billing purposes.
- 4.2 Please indicate any hours/days that are considered "free" calling periods.
- 4.3 Submit recommended rate plans
- 4.4 Submit costs for equipment as detailed in section 2.11
- 4.5 Indicate any costs for roaming and long distance
- 4.6 Please include a sample copy of your invoice
- 4.7 Indicate any cost associated with transitioning current service

Section 5: Rating Criteria

- 5.1 Price
- 5.2 Response in accordance with RFP
- 5.3 Technical Approach
- 5.4 Billing method
- 5.5 References

Exhibit B

Memorandum from Fredrick Feil, Director of Contracts and Procurement Services for Charleston
County School District attached as Exhibit B.

**Charleston County School District
Office of Contracts and Procurement Services
3999 Bridgeview Drive
N. Charleston, SC 29405**

To: Letter of Appeal
Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

From: Frederick Feil, Director of Contracts and Procurement Services *FWF*

Date: June 27, 2007

Re: Funding Request Denials
Form 471# 494054
Funding Request Numbers: 1429328, 1429353, 1429359

A Request For Proposals was not issued by the Charleston County School District for services applied for on Funding Request Numbers 1429328, 1429353, 1429359 on 471 application number 494054. In accordance with the E-Rate program rules and the Charleston County School District Procurement Code, Form 470# 798650000571355 served as the sole competitive bidding process for the cellular and paging services applied for in the 2007 E-Rate Funding Year.

Exhibit C

USAC Administrator's Decision on Appeal dated August 30, 2007



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2006-2007

August 30, 2007

F. Russell Doupnik
Charleston County School District
3999 Bridgeview Drive
North Charleston, SC 29405

Re: Applicant Name: CHARLESTON COUNTY SCHOOL DIST
Billed Entity Number: 127168
Form 471 Application Number: 494054
Funding Request Number(s): 1429328, 1429353, 1429359
Your Correspondence Dated: June 27, 2007

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2006 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1429328, 1429353, 1429359
Decision on Appeal: **Denied**
Explanation:

- During the appeal review, USAC thoroughly assessed the facts presented in the appeal letter, the relevant documentation on file, and the FCC Rules and Procedures before making its determination on your appeal. The referenced Form 470 number 798650000571355, indicated that a Request for Proposal (RFP) for the requested services was not available. On April 12, 2006, via the Selective Review Information Request (SRIR), you were asked to provide copies of any and all requests for proposals. In response to the SRIR, you provided a copy of the RFP used to solicit bids for the requested Telecom Services. The document specifically included district information, requirements for services sought, guidelines for submitting bids, and criteria by which bids would be evaluated. In accordance with guidelines set forth by the FCC, the aforementioned document matches the program's criteria for a RFP. This is a violation of the competitive

bidding requirements of this support mechanism because it undermines the framework of the competitive bidding process by suppressing a fair and open competition among potential bidders. By failing to advise bidders that a RFP was issued, potential vendors were not aware of the full scope of the project. If a RFP exists, the applicant must indicate on the Form 470 where the RFP is available. The goal of competitive bidding is to have as many bidders as possible respond to a Form 470 or an RFP so that the applicant can receive better service and lower prices. Based on the documentation on record, USAC supports the decision to deny these funding requests since you have failed to ensure an open and fair competitive bidding process. You have failed to provide evidence that USAC erred in its original decision; consequently, the appeal is denied.

FCC Rules require applicants to "submit a complete description of services they seek so that it may be posted for competing service providers to evaluate" and formulate bids. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, FCC 97-157, paras. 570, 575 (rel. May 8, 1997) (Universal Service Order). The applicant's FCC Form 470 should inform potential bidders if there is, or is likely to be, an RFP relating to particular services indicated on the form. See Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, et al., CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 26407, FCC 03-313, para. 39 (rel. Dec. 8, 2003).

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company



Schools & Libraries – Competitive Bidding Process

The competitive bidding process begins when an applicant posts the Form 470 to the USAC website and/or issues an RFP. The applicant must then wait 28 days after the Form 470 is posted or an RFP is issued (whichever is later) before selecting a service provider, ordering services and/or executing a contract.

Conduct an open, fair competitive bidding process

- "Open" means that there are no secrets in the process and that all bidders have equal access to the same information.
- "Fair" means that all bidders are treated the same and that no bidder has privileged knowledge over the contents of the Request for Proposal (RFP) or the Form 470.

Service provider involvement in the competitive bidding process

- Service provider involvement in the preparation or certification of the Form 470 or the vendor selection can taint the competitive bidding process and result in denials.
- Applicants cannot turn over their responsibility for ensuring a fair and open competitive bidding process to a service provider or a consultant acting on behalf of a service provider. Only applicants or authorized representatives can prepare, sign and submit (i.e., post to the website or file on paper) the Form 470 and certification.
- Listing a service provider representative as the Form 470 contact person and allowing the same service provider to participate in the competitive bidding process is a violation of FCC rules and will result in denial of funding.
- Service providers who bid on services must not participate in the evaluation process.

Select the winning bid

- Price of the eligible products and services must be the primary factor and given more weight than any other category when evaluating bids. It does not have to be the sole factor. Examples of relevant factors include: prior experience, personnel qualifications, management capability, environmental objectives, and the cost of ineligible goods and services.
- The selected bid must be cost-effective in comparison to prices available commercially. If you receive only one bid, it is not necessarily cost-effective.

Retain all documents for a period of five years from the last date of service

- This includes:
 - Request For Proposal (RFP), with evidence of publication date
 - Bid evaluation matrix, criteria and weighting
 - Bid evaluation worksheets
 - All written correspondence with the service providers
 - All bids submitted, both winning and losing
 - Other documentation related to service provider selection

For additional information, please use the USAC resources listed below:

28 Day Waiting Period:	http://www.usac.org/sl/applicants/step04/28-day-waiting-period.aspx
Competitive Process:	http://www.usac.org/sl/applicants/step03/
Open & Fair Bidding:	http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx
Selecting Service Provider:	http://www.usac.org/sl/applicants/step04/

Exhibit D

Relevant Sections of the
Charleston County School District Procurement Code
Including:
IV.A. Exemptions
And
V.B. Competitive Sealed Bidding

IV.A. Exemptions

CHARLESTON COUNTY SCHOOL DISTRICT PROCUREMENT CODE

identify information as a trade secret, the entire proposal or bid is made available for public inspection and copying.

IV. Procurement Organization

A. Committees and Management:

1. Centralization of Materials Management Authority. All rights, powers, duties and authority relating to the procurement of supplies, equipment, services, and information technology and to the management, control, warehousing, sale and disposal of supplies, construction, information technology, and services now vested in or exercised by a school or department under the provisions of law relating thereto, and regardless of source of funding, are hereby vested in the District. This vesting of authority shall be subject to Exemptions, Authority to Contract for Auditing Services, Authority to Contract for Legal Services, Authority to Contract for Certain Services, Small Purchases, Emergency Procurements, Exceptions for Small Architect-Engineer, and Land Surveying Services Contracts, and Management of Warehouse and Inventory.
2. Authority and Duties of the Board of Trustees.
 - a. Authority to Promulgate Policies. The Board of Trustees shall have the authority and responsibility to promulgate policies consistent with this code, governing the procurement, management, control and disposal of any and all supplies, services, equipment and construction to be procured by the District. Such policies shall be binding in all procurements made by the District.
 - b. Non-delegation. The Board of Trustees shall not delegate its power to promulgate policies.
 - c. Board Oversight. The Board of Trustees as a whole shall consider and decide matters of policy within the provisions of this code including those referred to it by the Superintendent. The Board of Trustees shall have the power to audit and monitor the implementation of its policies and the requirements of this code.
3. Authority and Duties of the Superintendent. The Board delegates to the Superintendent all authority and responsibilities for procurement. The Superintendent may delegate such authority to the Purchasing Official.
4. Exemptions. The Board of Trustees may exempt specific supplies or services from the purchasing procedures herein required or withdraw any exemption provided for in this section.

CHARLESTON COUNTY SCHOOL DISTRICT PROCUREMENT CODE

- The Board shall adopt the exemptions from the Consolidated Procurement Code of South Carolina (see Exhibit 1), both present and future, plus the items listed below:
 - Travel reimbursement to district employees only
 - Workshops, Seminars and Conferences
 - Professional Journals
 - Taxes, Social Security Annuities, Credit Unions
 - Refunds on Health Insurance
 - Diplomas
 - Art Reproductions
 - Psychologists
 - Speech and Hearing Therapists
 - Testing Materials & Scoring
 - Term Contracts established by the State Materials Management Office
 - Food items for nutritional instructional classes, after school programs and community schools
 - Security officers at school level
 - Immunization vaccines
 - Educational kits and replacement parts
 - Pilot programs
 - Student travel
 - Gift certificates
 - Training Facilities to include food, materials and equipment
 - Items procured for resale
 - Public service and utilities

5. Advisory Committees and Training

- a. Relationship with End User. The Purchasing Officials shall maintain a close and cooperative relationship with the end users. The Purchasing Officials shall afford each end user reasonable opportunity to participate in making recommendations with respect to procurement matters affecting the District.
- b. Advisory Groups. The Purchasing Officials may appoint advisory groups such as user committees to assist with respect to specifications and procurement in specific areas and with respect to any other matters within the authority of the Purchasing Officials. They shall develop methods for obtaining necessary and relevant information, whether through user committees or by surveys and other methods. They shall make every reasonable effort to ensure that such contracts are developed as will best suit the interest of the District, giving due emphasis to user needs, total costs and open competitive methods of public purchasing.

CHARLESTON COUNTY SCHOOL DISTRICT
PROCUREMENT CODE

- c. Authority to Contract for Certain Professional Services;
 - d. Competitive Sealed Proposals;
 - e. Negotiations After Unsuccessful Competitive Sealed Bidding;
 - f. Small Purchases;
 - g. Sole Source Procurements;
 - h. Emergency Procurements;
 - i. Procurement of Information Technology;
 - j. Leasing of Real Property for Governmental Bodies;
 - k. Architect-Engineer, Construction Management and Land Surveying Services Procurement Procedures;
 - l. Exception for Small Architect-Engineer and Land Surveying Services Contracts.
 - m. Fixed Price Bidding
 - n. Competitive Best Value Bidding
 - o. Competitive On-Line bidding
 - p. Procurement at Auctions
 - q. Indefinite Delivery Contracts
 - r. Construction Procurement Procedures
2. Competitive Sealed Bidding.
- a. Condition for Use. Contracts amounting to twenty-five thousand dollars or more shall be awarded by competitive sealed bidding except as listed above.
 - b. Invitation for Bids. An invitation for bids shall be issued in an effective and economical manner and shall include specifications, evaluation factors and all contractual terms and conditions applicable to the procurement.
 - c. Notice. Adequate notice of the invitation for bids shall be given at a reasonable time prior to the date set forth therein for the opening of bids. Such notice shall include publications in a newspaper of general circulation in the District or in "South Carolina Business Opportunities" or through a means of central electronic advertising as approved by the Purchasing Department.
 - d. Receipt and Safeguarding of Bids. All bids (including modifications) received prior to the time of opening shall be kept secure and unopened.
 - e. Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids and in the manner prescribed by regulation. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder, shall be tabulated. The tabulation shall be open to public inspection at that time.
 - f. Bid Acceptance and Bid Evaluation. Bids shall be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations

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that are not set forth in the invitation for bids. Bids shall be evaluated based on the requirements set forth in the invitation for bids.

- g. Correction or Withdrawal of Bids; Cancellation of Awards. Correction of minor or technical mistakes or withdrawal of inadvertently erroneous bids, withdrawal of erroneous bids after award, or cancellation of award or contracts based on such bid mistakes, may be permitted in accordance with regulations. After bid opening no change in bid prices or other provisions of bids prejudicial to the interest of the District or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards, or contracts, after award but prior to performance shall be supported by a written determination of appropriateness made by the Purchasing Official.
- h. Discussion with Bidders. As approved in the invitation for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the Purchase Agent's sole judgement, needing clarification shall be accorded such an opportunity. Clarification of any bidder's bid must be documented in writing by the Purchasing Official and shall be included with the bid. Documentation concerning the clarification shall be subject to disclosure upon request as required by Section III of the District's Procurement Code.
- i. Tie Bids. If two or more bidders are tied in price while otherwise meeting all required conditions, awards are determined as follows:
 - (1). Should there be a Charleston County firm tied with an out-of-county firm, the award shall be made automatically to the Charleston firm.
 - (2). Should there be a South Carolina firm tied with an out-of-state firm, the award shall be made automatically to the South Carolina firm.
 - (3). Tie bids involving South Carolina produced or manufactured products, when known, and items produced or manufactured out of State shall be resolved in favor of the South Carolina commodity.
 - (4). Tie bids involving Charleston County firms shall be resolved by the flip of a coin in the Purchasing Department witnessed by at least two people.
 - (5). Tie bids involving South Carolina firms not located within Charleston County shall be resolved by the flip of a coin in the Purchasing Department witnessed by at least two people.

These are the only conditions under which any preference is shown in a tie bid.
- j. Award. Unless there is a compelling reason to reject bids as prescribed by regulations of the District, notice of an intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location specified in the invitation for bids. Prior to the

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posting of the award, the District may negotiate with the lowest responsive and responsible bidder to lower his bid within the scope of the invitation for bids. The invitation for bids and the posted notice must contain a statement of the bidder's right to protest and the date and location of posting must be announced at bid opening. When a contract has a total or potential value in excess of fifty thousand dollars (\$50,000), in addition to the posted notice, notice of an intended award must be given to all bidders responding to the solicitation, except when only one response is received. Such notice must contain a statement of the bidder's right to protest. When a contract has a potential value of in excess of fifty thousand dollars (\$50,000), sixteen days after notice is given the District may enter a contract with the bidder named in the notice in accordance with this code and bid solicited. When only one response is received, the notice of intended award and the sixteen-day delay of award may be waived. A determination of responsibility must be made in accordance with Article VB(14) - Responsibility of Bidders and Offerors.

- k. Request for Qualifications. Prior to soliciting bids, the District, acting through the Purchasing Official, may issue a request for qualifications from prospective bidders. Such request shall contain at a minimum a description of the goods or services to be solicited by the invitation for bids, the general scope of the work, the deadline for submission of information, and how prospective bidders may apply for consideration. The request shall require information concerning the prospective bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the requested qualifications shall be given in the manner provided in Article V.B.2.c. The use of the request for qualifications is subject to the approval of the Superintendent.

After receipt of the responses to the request for qualifications from prospective bidders, the prospective bidders shall be ranked from most qualified to least qualified on the basis of the information provided. Bids shall then be solicited from at least the top two prospective bidders by means of an invitation for bids. The failure of a prospective bidder to be selected to receive the invitation for bids shall not be grounds for protest under Article XIII. Legal and Contractual Remedies

3. Competitive Fixed Price Bidding

- a. In instances where regular competitive sealed bidding is not practical or advantageous, the Purchasing Department will determine in writing that competitive fixed price bidding will be used for the procurement of supplies or services. The purpose of competitive fixed price bidding is to provide multiple source of supply for specific goods and services based on